

MS# 183195.01 (4967)  
PATIENTREMARKS

Applicant has thoroughly considered the Examiner's remarks in the December 16, 2005 Office action, and respectfully requests further reconsideration of the application in light of the following remarks. Thus, claims 1-13, 15-37, 47, 48, 50 and 55-58 are presented in the application for further examination.

Claims 1-3, 6, 7, 9, 11, 12, 16-19, 21-26, 28-33, 36, 37 and 55-58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,823,047 to Cruickshank (Cruickshank) in view of U.S. Patent Application Publication No. 2002/0032689 to Abbott, III (Abbott).

Cruickshank discloses an IVR system for relaying stored personal information data about a caller to a messaging system subscriber. The Office acknowledges that Cruickshank fails to disclose determining for each intended recipient, a preferred one of the specified communication devices by which [to deliver a message to] such intended recipient. But the Office asserts "it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify Cheston (sic) using the teaching of routing information to a user as taught by Abbott. (See Office action at pages 4 and 5). However, even when combined as suggested by the Office, the cited art fails to teach or suggest each and every element of the claimed invention. Thus, *prima facie* obviousness cannot be established. (See MPEP 2142 and 2143).

Applicant submits Abbott fails to remedy the deficiencies of Cruickshank. Abbott discloses a method and system for computer-based storing of information that can be used to assist a user to recall a variety of types of information. In particular, Abbott discloses a Computer-Augmented Memory (CAM) system for acquiring a variety of current state information of different types (e.g., video, audio, and textual information) about the environment, about the user of the CAM system, and about the CAM system itself via internal and external sensors and other input devices. The CAM system then associates the variety of state information together as a group, and stores the group of state information for later retrieval. In addition to the current state information, the CAM system can associate other information with the group, such as one or more recall tags that facilitate later retrieval of the group, or one or more annotations to provide contextual information when the other state information is later retrieved and presented to the user. (See Abbott, page 2, paragraph 0024). In other words, the CAM system allows a user to retrieve previously-acquired state information, and other

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information, such as annotations, for presentation to the user in order to assist the user's recollection of the previous state when the information was stored. (See Abbott, page 1, paragraph 0006).

In contrast, the present application discloses predicting a preferred communication device by which an intended recipient should receive delivery or notification of a voice or audio message based on the time of day and number of successfully completed calls. More specifically, the claimed features of applicant's invention not only enable a voice or other audio message to be sent to a communication device of an intended recipient via a communication network, but also enable determining a preferred communication at which to deliver the message based on the time the message is received by the communication device. To this end, claim 1, recites in part, a method that includes "determining, for each of the intended recipients, a preferred one of the specified communication devices by which such intended recipient should receive delivery or notification of voice messages directed to such intended recipient *as a function of a time period during which the voice messages are received* and updating the respective user profile accordingly." Claim 47 recites "determining a preferred one of one or more remote communication devices specified in a profile associated with the recipient *as a function of a time period during which the voice message is received*."

The Office asserts that Abbott "teaches determining for each intended recipients, a preferred one of the specified communication devices by which such intended recipient [should receive delivery or notification of voice messages directed to such intended recipient] as a function of time period during which the voice messages are received and updating the respective user profile accordingly." (See Office action at page 4). Applicant respectfully submits that this interpretation is not supported by the teachings of the Abbott reference. In particular, this conclusion is not supported by the following paragraph, which was cited as the basis for the Office's conclusion:

"The remaining displayed portions of the user condition model indicate that user preference information and externally supplied information can be included in the user condition model. For example, the Application X-Factor 1 variable has been supplied by application X, as well as a value for the variable. In this case, the value is a normal probability distribution with a mean of 23 and a standard deviation of 3. In addition,

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previously supplied user preference information can indicate which output devices and which output formats are preferred by the user. Alternately, the system can have automatically learned these preferences over time by observing user reactions to various outputs, as well as from explicit suggestions and overrides by the user. Those skilled in the art will appreciate that the illustrated user condition model is merely illustrative and is not intended to limit the scope of the present invention. The model may contain additional variables or may lack some illustrated variables, or may be represented without explicit condition variables at all." (See Abbott, page 14, paragraph 101).

This portion of Abbott discloses supplying user preference information to indicate which output devices and which output formats are preferred by the user, or in the alternative that the system automatically learned these preferences (i.e., preferred output device) over time by observing user reactions to various outputs, as well as from explicit suggestions. However, the output devices disclosed in Abbott refer to the type of device that will display previously stored information to assist the user's recollection, and, thus has absolutely nothing to do with determining a preferred communication device at which to deliver a voice or audio message as claimed and described in the present application. Moreover, merely learning a preferred device is not the same as determining a preferred one of the specified communication devices by which such intended recipient should receive delivery or notification of voice messages *as a function of a time period during which the voice messages are received*. For example, as described in the present application, "the system 200 learns, over time, that a particular user is nearly always accessible via her mobile phone *during certain hours of the day* and adjusts the user's profile accordingly." (See application page 11, paragraph 28). As a result, a voice message received between, for example, 5:00PM – 6:00PM may be routed to the called party's mobile number even though more calls are successfully completed at the called party's work number. According to Abbott, if the user's preferred device, whether identified by the user or automatically by system, corresponds to the party's work number, there is no teaching or suggestion that if the called party receives more successful calls at a work number as opposed to a mobile number, calls will be routed to the mobile number before being routed to the preferred work number if received *during certain a time period (e.g., 5:00PM – 6:00PM) of the day*. Thus, even when combined as suggested by the Office, Cruickshank and Abbott fail to teach or

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suggest a method for determining a preferred communication device as a function of a time period during which the voice message is received as set forth in claims 1 and 47. As such, claims 1 and 47 are allowable over the cited references.

Claim 18 recites an apparatus for recording and sending audio messages to an interactive voice response (IVR) system comprising "computer instructions ... configuring [a] processor to determine a preferred one of the one or more remote communication devices specified in the profile of the recipient at which to deliver the audio message *as a function of a time period during which the audio message is provided by the user* and to deliver the audio message to the intended recipient at the preferred communication device." Claim 28 recites "determining a preferred one of the one or more remote communication devices specified in a user profile associated with the recipient *as a function of a time period during which the audio message is transferred to the audio file*, and claim 55 states "learning over time which one of a plurality of remote communication devices specified in a profile associated with the intended recipient is preferred at which to notify the intended recipient of the received audio message *based on a time period during which previous audio messages have been successfully received by the intended recipient at each of the plurality of remote communication devices*" For substantially the same reasons, the combination of Cruickshank and Abbott fails to teach or suggest each and every element of claims 1 and 47, these cited references also fail to teach or suggest each and every element of claims 18, 28 and 55. Accordingly, applicant submits claims 18, 28 and 55 are allowable over the cited reference.

Furthermore, applicant submits that the selective combination of the Cruickshank and Abbott references is based on hindsight gleaned from the invention itself rather than from a teaching in the art suggesting their combination. Even if the Office takes into account knowledge available at the time of the claimed invention, the cited art must support the selective combination of the references by suggesting the desirability of making the combination. See Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ 2d 1434, 1438 (Fed. Cir. 1988). Applicant understands that an express, written motivation to combine prior art references need not appear in the references before a finding of obviousness, but may come from the nature of a problem to be solved, leading inventors to look to references relating to possible solutions to that problem. See Ruiz and Foundation Anchoring System, Inc. v. A.B. Chance Co., 357 F.3d

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1270 (Fed. Cir. 2004). However, neither an express, written motivation to combine prior art references appears in the references nor is the nature of the problem being solved the same.

In this case, the primary reference, Cruickshank, discloses a method, apparatus and system for providing a subscriber to a messaging system, such as a voice messaging system, with detailed personal information data (PID) associated with the source of a stored message (i.e., the caller that left the message). (See Cruickshank, column 4, lines 14-19). For example, the calling party's PID may include data corresponding to fax numbers, pager numbers, voice telephone numbers and an e-mail address (in addition to the name, address and other conventional business card type data). (See Cruickshank, column 10, lines 6-9). However, as acknowledged by the Office, Cruickshank fails to teach or suggest determining a preferred communication device by which an intended recipient should receive delivery or notification of voice messages *as a function of a time period during which the voice messages are received*. The secondary reference, Abbott, not only fails to provide a written motivation to combine prior art references, but also fails to deal with the problem being solved (i.e., determining a preferred communication device by which an intended recipient should receive delivery or notification of voice messages *as a function of a time period during which the voice messages are received*). Instead, Abbott discloses a system and method for storing information that can be used to assist a user later recall a variety of types of information about a particular person or event. Not only does Abbott fail to deal with the problem being solved, Abbott has absolutely nothing to do with voice messaging systems. As such, Applicant respectfully requests that the Examiner remove the rejections of claims 1, 18, 28 and 55 based on these references, and/or provide some teaching, suggestion, or motivation in the prior art to select and combine the Cruickshank and Abbott references.

Applicant has reviewed the Examiner's reasons for rejecting the following dependent claims: Claims 4-5, 13, 15, 48, and 50 (Cruickshank in view of Abbott and further in view of U.S. Patent No. 6,233,318 to Picard (Picard)); Claims 8 and 20 (Cruickshank in view of Abbott and further in view of U.S. Patent No. 5,568,539 to Bergsman et al); Claim 10 (Cruickshank in view of Abbott and further in view of U.S. Patent No. 6,330,308 to Cheston et al.); and Claims 27, 34, and 35 (Cruickshank in view of Abbott and further in view U.S. Patent No. 6,301,609 to Aravamudan). For the reasons noted above, none of these references, whether considered alone or in combination, teach or suggest each and every element of applicant's amended independent claims 1, 18, 28, 47, and 55. Thus, the rejection of these claims should be withdrawn.

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Independent claim 47 also stands rejected under 35 U.S.C. 103(a) over Cruickshank in view of Abbott and further in view of Picard. However, it appears the Office primarily relied on the combination of Cruickshank and Abbott. (See Office action at page 10) as Picard is cited as teaching that an electronic message includes a hyperlink to a stored voice message. As discussed above, Cruickshank and Abbott fail to teach or suggest a method for determining a preferred communication device *as a function of a time period during which the voice message is received* as set forth in amended claim 47, and Picard fails to remedy this deficiency. Thus, none of the references cited by the Office, whether considered alone or in combination, teach or suggest each and every element of applicant's amended independent claim 47. Accordingly, the rejection of claim 47 based on these references should be withdrawn.

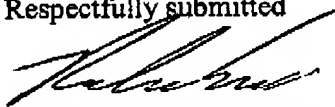
In view of the foregoing, applicant submits that claims 1, 18, 28, 47 and 55 are allowable over the cited art. The remaining claims are dependent claims and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action, and applicant respectfully submits that pending claims 1-13, 15-37, 47, 48, 50 and 55-58 are allowable over the cited art and that the subject application is now in condition for allowance.

The fact that the applicant may not have specifically traversed any particular assertion by the Office should not be construed as indicating applicant's agreement therewith.

Any required fees or overpayments should be applied to Deposit Account No. 19-1345.

Respectfully submitted



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